

REMARKS

Claims 17 to 27 are added, and therefore claims 9 to 27 are currently pending and being considered in the present application.

Reconsideration is respectfully requested based on the following.

Applicants thank the Examiner for acknowledging the claim for foreign priority and for indicating that all certified copies of the priority documents have been received.

To facilitate matters, enclosed are courtesy copies of the references cited in the previously filed IDS and 1449 papers. It is noted that these references should have been provided by the International Authority. It is respectfully requested that the Examiner consider all such references, and acknowledge their consideration, consistent with U.S.P.T.O. practice and the MPEP.

According to M.P.E.P. § 1893.03(g), “[a]s a result of an agreement among the European Patent Office (EPO), Japan Patent Office (JPO), and the United States Patent and Trademark Office (USPTO), copies of documents cited in the international search report issued by any one of these International Searching Authority Offices generally are being sent to the other Offices when designated in the international application.” *Accordingly, in United States national stage applications where the international search was conducted by the EPO, JPO, or USPTO, copies of the documents cited in the international search report are made available to the examiner in the national stage application, so that the applicant need not provide such copies and is not required to provide such copies. In sum, to facilitate matters, enclosed are courtesy copies of the subject foreign references. It is respectfully requested that the Examiner consider all such references, and acknowledge their consideration, consistent with U.S.P.T.O. practice and the MPEP.*

It is asserted that Figure 1, 3 and 4 should be labeled. (*Paper Number 20080627, p. 3.*) The figures have been revised as suggested. Approval and entry are respectfully requested. Therefore, it is respectfully submitted that drawing objections be withdrawn.

Claim 9 to 16 were rejected under 35 U.S.C. 103(a) as unpatentable over the “Background Information” in view of Schumacher et al. U.S. Patent No. 7,137,645 (“Schumacher”). (*Paper Number 20080627, p. 3.*).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria

must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

The Schumacher reference concerns a control device for a restraining system in a motor vehicle is proposed, a safety switch, which also includes a watchdog, performing the function of a safety switch in the control device. The safety switch monitors sensor signals which are transmitted to the processor of the control device for plausibility and triggers appropriate restraining systems via a time unit for a predefined time period only when the safety switch itself detects a trigger event. Based on the supplementary data from the sensor signals, the safety switch infers how the sensor signals are to be processed. The safety switch is designed so that it triggers the restraining systems correspondingly assigned to the sensors. When the control device is switched on, the processor performs a test of the safety switch by generating a test signal using the sensors. (See Abstract).

It is noted that the present application, U.S. Serial No. 10/564,225 (the “’225 application”) and the U.S. Schumacher patent application were, at the time the invention described in the ‘225 application was made, commonly owned by and/or subject to an obligation of assignment to the present applicant -- namely, Robert Bosch GmbH. In view of Applicant’s common ownership of both U.S. patent applications, the specifically asserted U.S. Schumacher patent is not prior art under 35 U.S.C. 103(c) as to the present application.

Accordingly, the Schumacher reference does not describe or suggest the feature of “a pressure sensor situated in a side part of the vehicle, the pressure sensor having a housing with a pressure inlet opening,” as provided for in the context of claim 1.

In particular, the Office Action refers to a pressure sensor and plausibility sensor of Background Information as the pressure sensor and plausibility sensor. (*Paper Number 20080627, pg 4.*) The Office Action concedes that the “Background Information” (the characterization of which is not necessarily conceded) does not describe the plausibility sensor being a switch that is assigned to the housing of the pressure sensor. (*Paper Number 20080627, pg 4 and 6.*) The Office Action does not appear to specifically describe a pressure sensor housing with a pressure inlet opening. In particular, the Office Action relies on control device 10 as being the housing of the side impact sensor. (*Paper Number 20080627, pg 4.*) It is respectfully submitted that control device 10 is an electrical component used to check individuals IC’s when it is turned on. The control device includes processor 4, safety switch 5, time unit 6, ignition control 7, output stages 8 and acceleration sensor 1. (*Schumacher, Col. 3, lines 33 to 40; Col. 4, lines 1 to 15.*) Even if control device 10 may provide a common electrical platform for a plurality of electrical IC’s to coincide, it is plain that having a common electrical platform does not disclose nor suggest a housing for a pressure sensor, let alone pressure sensor housing with a pressure inlet opening, as provided for in the context of the claimed subject matter.

Moreover, the Office Action does not appear to specifically describe the motivation to modify the system of the Background Information to achieve the functionalities of that of the Schumacher system. In particular, even if the Background Information may refer to a pressure sensor reacting to an adiabatic pressure increase created by the side impact, Schumacher does not describe such a device located within the control device 10. That is, the acceleration sensor 1 contains electronics that amplify and digitize the measuring signals. A side impact sensor is connected on the passenger door and not affiliated with the control device 10. Significantly, this satellite arrangement away from the control device 10 is necessary to detect effectively impacts to the passenger door. (*Schumacher, Col. 2, lines 60 to 65; Col. 3, lines 5 to 10 and lines 32 to 37; Fig. 1.*) To the extent that acceleration sensor and impact sensor are located in distinct areas within Schumacher’s system, with the control device 10 providing centralized testing of ICs while verifying corresponding sensor signals from satellite sensors 2 and 3, which are distributed over the vehicle to perform a plausibility

check, there is no reasonable expectation of successful operation of Schumacher's system if a different configuration of control device 10 and satellite sensors 2 and 3 is used.

For example, combining impact sensors 2 and 3 to be a part of control device 10 would require a plurality of control devices 10 wherever impact sensors 2 and 3 are located. This would result in a duplication of other components on the control device 10, including the safety switch 5 thereby creating a plurality of safety switches and sensors. Notably, Schumacher's centralized safety switch relies on sensors distributed over the vehicle to provide data and utilizes the appropriate hardware algorithm and the appropriate thresholds to correctly process these sensor signals. (*Schumacher, Col. 1, lines 57 to 61*). Conspicuously, the Office Action offers no suggestion on how to modify Schumacher's distributed sensor system with a centralized switch to a distributed sensor system with a plurality of safety switches nor guidance as to how the newly modified platform (in particular, the newly distributed safety switches and their interactions with the distributed sensors) could even operate.

Accordingly, in light of the foregoing reasons, Schumacher does not disclose or suggest the feature of a pressure sensor situated in a side part of the vehicle, the pressure sensor having a housing with a pressure inlet opening, and a plausibility sensor, the plausibility sensor being a switch that is assigned to the housing of the pressure sensor, as provided for in the context of the claimed subject matter.

Therefore, claims 9 and 16 are allowable, as are their dependent claims 10 to 15.

As further regards the obviousness rejections, it is respectfully submitted that the cases of *In re Fine*, *supra*, and *In re Jones*, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992), make plain that the Office Action's generalized assertions that it would have been obvious to modify or combine the references do not properly support a § 103 rejection. It is respectfully submitted that those cases make plain that the Office Action reflects a subjective "obvious to try" standard, and therefore does not reflect the proper evidence to support an obviousness rejection based on the references relied upon. In particular, the Court in the case of *In re Fine* stated that:

The PTO has the burden under section 103 to establish a *prima facie* case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. This it has not done. . . .

Instead, the Examiner relies on hindsight in reaching his obviousness determination. . . . One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

In re Fine, 5 U.S.P.Q.2d at 1598 to 1600 (citations omitted; italics in original; emphasis added). Likewise, the Court in the case of In re Jones stated that:

Before the PTO may combine the disclosures of two or more prior art references in order to establish *prima facie* obviousness, there must be some suggestion for doing so, found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. . . .

Conspicuously missing from this record is any evidence, other than the PTO's speculation (if it be called evidence) that one of ordinary skill . . . would have been motivated to make the modifications . . . necessary to arrive at the claimed [invention].

In re Jones, 21 U.S.P.Q.2d at 1943, 1944 (citations omitted; italics in original).

It is believed and respectfully submitted that the present Office Action offers no evidence, but only conclusory hindsight, reconstruction and speculation, which these cases have indicated does not constitute evidence that will support a proper obviousness finding. Unsupported assertions are not evidence as to why a person having ordinary skill in the art would be motivated to modify or combine references to provide the claimed subject matter of the claims to address the problems met thereby. Accordingly, the Office must provide proper evidence of a motivation for modifying or combining the references to provide the claimed subject matter.

More recently, the Federal Circuit in the case of In re Kotzab has made plain that even if a claim concerns a “technologically simple concept” — which is not the case here — there still must be some finding as to the “specific understanding or principle within the knowledge of a skilled artisan” that would motivate a person having no knowledge of the claimed subject matter to “make the combination in the manner claimed,” stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there

was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed. In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper prima facie case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000) (emphasis added). Here again, there have been no such findings to establish that the features discussed above of the rejected claims are met by the reference relied upon. As referred to above, any review of the reference, whether taken alone or combined, makes plain that it simply does not describe the features discussed above of the rejected claims.

It is therefore respectfully submitted that Schumacher and the Background Information (regardless of its proper characterization – which as asserted is not conceded), taken alone or in any combination, does not describe or suggest the features of independent claim 9 and 16. Claims 2 to 15 depend from claim 9 and are therefore allowable for the same reasons.

Accordingly, it is submitted that claims 9 to 16 are allowable.

Claim 9 was rejected under 35 U.S.C. 103(a) as unpatentable over the “Background Information” in view of U.S. Patent No. 5,504,379 to Mazur et al. (“Mazur”). (*Paper Number 20080627, p. 5*).

The Mazur reference refers to a vehicle crash sensing arrangement that includes an accelerometer and an integrator for determining crash velocity in response to sensed crash acceleration. A second integrator determines a crash displacement value from the crash velocity value. A variable velocity threshold value is determined in response to the determined crash displacement value. The crash velocity value is compared against the variable threshold value. The comparator provides a signal indicative of a vehicle crash condition when the crash velocity value is greater than the velocity threshold value. (*Mazur, Abstract*).

Accordingly, the Mazur document does not disclose any of the features described above, and does not disclose or suggest that the deficiencies of Schumacher or AAPA should be remedied or changed in any way to provide the presently claimed subject matter. Still further, since the secondary reference does not cure -- and is not asserted to cure -- the critical deficiencies of the primary reference, claims 9 to 16 are allowable.

Accordingly, claims 9 to 16 are allowable.

New claims 17 to 27 do not add any new matter and are supported by the present application. Claims 17 to 24 depend from claim 16 and are therefore allowable for the same reasons. Claims 25 to 27 depend from claim 9 and are therefore allowable for the same reasons.

Accordingly, claims 9 to 27 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

KENYON & KENYON LLP

Dated: 8/28/2008

By Gerard A. Messina

Gerard A. Messina
(Reg. No. 35,952)

One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646

By R
U.S. No.
33,865
Adm C
DEPTCH

AMENDMENTS TO THE DRAWINGS:

Two Replacement Sheets for Figures 1, 3 and 4 accompany this paper. In the Replacement Sheets, corresponding labels to the boxes -- has been added in Figure 1, 3 and 4, as suggested. No new matter has been added. Approval and entry are respectfully requested.

Attachment: Two (2) Replacement Sheets